

1 Kathleen Sullivan (SBN 242261)  
kathleensullivan@quinnmanuel.com  
2 QUINN EMANUEL URQUHART &  
SULLIVAN LLP  
3 51 Madison Avenue, 22<sup>nd</sup> Floor  
New York, NY 10010  
4 Telephone: (212) 849-7000  
Facsimile: (212) 849-7100

5 Sean S. Pak (SBN 219032)  
seanpak@quinnmanuel.com  
John M. Neukom (SBN 275887)  
7 johnneukom@quinnmanuel.com  
Matthew D. Cannon (SBN 252666)  
8 matthewcannon@quinnmanuel.com  
QUINN EMANUEL URQUHART &  
9 SULLIVAN LLP  
50 California Street, 22<sup>nd</sup> Floor  
10 San Francisco, CA 94111  
Telephone: (415) 875-6600  
11 Facsimile: (415) 875-6700

12 Mark Tung (SBN 245782)  
marktung@quinnmanuel.com  
13 QUINN EMANUEL URQUHART &  
SULLIVAN LLP  
14 555 Twin Dolphin Drive, 5<sup>th</sup> Floor  
Redwood Shores, CA 94065  
15 Telephone: (650) 801-5000  
Facsimile: (650) 801-5100

16  
17 Attorneys for Plaintiff Cisco Systems, Inc.

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19 **UNITED STATES DISTRICT COURT**

20 **NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION**

22 CISCO SYSTEMS, INC.,

23 Plaintiff,

24 vs.

25 ARISTA NETWORKS, INC.,

26 Defendant.

CASE NO. 5:14-cv-5344-BLF

**CISCO'S OPPOSITION TO ARISTA'S  
MOTION TO DISMISS PURSUANT TO  
FED. R. CIV. P. 12(B)(6)**

Date: July 2, 2015

Time: 9:00 A.M.

Dept.: Courtroom 3

**DEMAND FOR JURY TRIAL**

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1     **I. INTRODUCTION AND SUMMARY OF ARGUMENT**

2                 Cisco Systems, Inc. (“Cisco”) filed an amended complaint because, after Arista  
 3 indisputably knew of Cisco’s patent rights and allegations that Arista’s existing products infringed  
 4 those rights in light of Cisco’s filing of its original complaint, Arista released a new product  
 5 adding new features that willfully infringed Cisco’s patents. Arista did nothing to adjust its  
 6 conduct with respect to Cisco’s patents and instead willfully and publicly announced its new  
 7 infringing product with much fanfare. Yet, Arista now moves to dismiss these allegations by  
 8 citing case law having no relevance whatsoever to the fact pattern here.

9                 In its original complaint, which was filed on December 5, 2014, Cisco alleged that  
 10 Defendant Arista Networks, Inc. (“Arista”) infringed certain Cisco copyrights and patents. After  
 11 Arista learned of Cisco’s patents from Cisco’s original complaint, Arista conducted a widely  
 12 publicized launch of a ***brand new infringing product called EOS+***. Cisco therefore filed an  
 13 amended complaint on March 6, 2015, adding claims for willful and indirect patent infringement  
 14 based on Arista’s conduct since Cisco filed its original complaint. (Dkt. 37.) As set forth in the  
 15 amended complaint, Arista’s deliberate decision to launch EOS+ despite knowing of Cisco’s  
 16 patents gives rise to a claim for willful patent infringement. Not a single case cited by Arista  
 17 involves such acts of willful infringing conduct; all of Arista’s cases are directed to infringers who  
 18 merely continued to sell the same accused products after the filing of a complaint. Arista’s highly  
 19 publicized launch of a new product after it learned of Cisco’s patents, on the other hand, is a  
 20 ***separate act of infringement*** for which Cisco is entitled to full redress—including enhanced  
 21 damages for its willful character. Cisco should not be precluded from pursuing its willfulness  
 22 claims simply because it chose to bring those claims in a more judicially efficient manner by  
 23 amending the existing complaint, as opposed to filing a separate complaint.

24                 The willfulness of Arista’s post-filing conduct is particularly striking. There can be no  
 25 dispute that Arista misappropriated Cisco’s intellectual property in its previous EOS product. In  
 26 public statements following the filing of Cisco’s original complaint, Arista’s CEO confirmed that  
 27  
 28

1 Arista had wrongfully copied documentation for Cisco’s CLI,<sup>1</sup> which is copyrighted. (See Exs. 1,  
 2.)<sup>2</sup> Admitting Arista’s copyright infringement, Arista’s CEO stated that this copying was  
 3 “*unacceptable*” and a “*mistake*,” and that Arista would implement corrective measures, including  
 4 unspecified personnel actions with respect to the copyists. (See *id.*) In its answer to the original  
 5 complaint, Arista also admitted that its EOS product includes verbatim copies of more than 500 of  
 6 Cisco’s IOS CLI command expressions and certain CLI command modes and prompts. Yet Arista  
 7 has taken no corrective action with respect to these continuing acts of infringement. (See Dkt. 36  
 8 at ¶¶ 53, 54.)

9 Instead, after learning of Cisco’s copyright and patent infringement allegations through the  
 10 original complaint, Arista broadened its infringement and—with much fanfare—launched its new  
 11 EOS+. Touted by Arista as containing a set of “pioneering innovations” in “cloud networking”  
 12 (*see* Ex. 3), EOS+ apparently *adds new infringing functionality covered by Cisco’s patents*. But  
 13 although the launch of EOS+ was a well-orchestrated media event, Arista’s vocal praise for its  
 14 new product and its new functionality is conspicuously absent from Arista’s motion to dismiss. In  
 15 fact, Arista’s motion does not even mention EOS+. Arista simply ignores the fact that Cisco’s  
 16 willful infringement allegations added by amendment are based on Arista’s much-hyped release of  
 17 a new product—an act Arista indisputably undertook after it knew of Cisco’s patents.

18 With respect to indirect infringement, the parties have no real dispute. Arista does not  
 19 challenge the sufficiency of Cisco’s allegations that Arista has indirectly infringed Cisco’s patents  
 20 since Arista received Cisco’s original complaint. Because Cisco’s indirect infringement

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24       <sup>1</sup> Cisco’s intellectual property in this case relates to the command-line interface (“CLI”) for  
 25 its Internetwork Operating System (“IOS”). Cisco’s IOS CLI was a major breakthrough in the  
 26 technology for communicating with network routing and switching devices, and it has proven to  
 27 be immensely popular—so much so that Cisco’s competitor Arista has implemented a similar CLI  
 28 in its Extensible Operating System (“EOS”).

27       <sup>2</sup> Citations to “Ex. \_\_” refer to exhibits to the Declaration of Matthew D. Cannon in Support of  
 28 Cisco’s Opposition to Arista’s Motion to Dismiss, filed herewith.

1 allegations are presently limited to conduct occurring in that period,<sup>3</sup> there are no pre-suit indirect  
 2 infringement allegations to dismiss.

3 **II. FACTUAL BACKGROUND**

4 On December 5, 2014, Cisco filed its original complaint in this case. (Dkt. 1.) That  
 5 complaint alleged, *inter alia*, that Arista directly infringes Cisco's copyrights in its IOS and  
 6 related documentation, as well as U.S. Patent Nos. 7,953,886 ("'886 patent") and 7,047,526 ("'526  
 7 patent"). (Exs. 4, 5.) Cisco's copyright infringement allegations were based on Arista's blatant  
 8 copying of Cisco's IOS product documentation, CLI command expressions, and CLI command  
 9 modes and prompts. With respect to the '886 patent, Cisco's infringement allegations were based  
 10 on Arista's use of a system for automatically translating commands originally received in a non-  
 11 CLI format into CLI command expressions and translating CLI output into the format in which the  
 12 command was originally sent. With respect to the '526 patent, Cisco's infringement allegations  
 13 were based on Arista's use of systems for automatically translating generic commands into  
 14 specific command expressions, such as those implemented in Cisco's IOS CLI. Cisco's original  
 15 complaint included no allegations of indirect or willful patent infringement.

16 Arista was aware of Cisco's complaint (including the '886 and '526 patents) at least as of  
 17 December 5, 2014. (*See* Ex. 2.) Arista was formally served with that complaint on December 9,  
 18 2014. (*See* Dkt. 18.)

19 After receiving Cisco's complaint, Arista's CEO admitted publicly that Arista had in fact  
 20 copied some of Cisco's IOS product documentation. (*See* Exs. 1, 2.) She further stated that  
 21 Arista's conduct in doing so was "unacceptable" and a "mistake." (*See id.*) In an attempt to  
 22 remedy the situation, Arista announced that it would take steps to "fix it" and would take  
 23 personnel actions against the Arista employee(s) who were responsible. (*See id.*)

24  
 25 \_\_\_\_\_  
 26       <sup>3</sup> Information Cisco learns in discovery may show that Arista knew of Cisco's asserted patents  
 27 in this case long before the original suit was filed against Arista's prior EOS products. Should that  
 28 be the case, Cisco reserves the right to move for leave to amend its complaint to add allegations of  
 pre-suit indirect infringement for those products.

1 Yet Arista took a markedly different tack with respect to its use of Cisco’s additional  
 2 intellectual property asserted in the complaint. With respect to Cisco’s IOS CLI command  
 3 expressions, Arista eventually **admitted** to using Cisco’s IOS CLI command expressions and  
 4 command modes and prompts in its own products (*see* Dkt. 36 at ¶¶ 53, 54), but has taken no steps  
 5 to remove Cisco’s copyrighted command expressions and command modes and prompts from its  
 6 products. Nor has Arista taken any steps to remove the functionality covered by Cisco’s patents.  
 7 In fact, despite learning of Cisco’s allegations that its use of Cisco’s command expressions and  
 8 related functionality infringed Cisco’s copyrights and patents, Arista launched a new product  
 9 dubbed “EOS+” on December 10, 2014. (*See* Dkt. 37 at ¶ 58 (citing Ex. 6).)

10 Arista has been clear that EOS+ is a new product with different capabilities than EOS.  
 11 Although EOS+ retained the infringing functionality of EOS—including its use of Cisco’s  
 12 copyrighted CLI command expressions and patented technologies for translating communications  
 13 from other platforms and/or using another language into CLI commands—Arista has repeatedly  
 14 told the public that EOS+ has new features that Arista seems intent on marketing aggressively. In  
 15 the press release that announced EOS+, for example, Arista described its new product as an  
 16 “addition” to its product line that is “an evolution of Arista EOS” and “provides an advanced level  
 17 of programmability.” (*See* Ex. 6.) EOS+ purportedly provides a “speedier and more cost-  
 18 effective alternative to the legacy approach” of EOS in that it requires less effort to test and certify  
 19 network hardware and applications. (*See id.*)

20 Arista’s press release announcing its new product with its new functionality was not an  
 21 isolated occurrence. In even bolder language, Arista’s CEO claimed that EOS+ was not just new,  
 22 but in fact included “pioneering innovations” in “cloud networking.” (*See* Ex. 3.) Various press  
 23 outlets picked up the story of the EOS+ product launch, often with quotes from Arista employees  
 24 describing how it improves on the legacy EOS offering by providing new levels of  
 25 programmability. (*See* Exs. 7, 8.)

26 The new features of EOS+ appear to include new infringing functionality, expanding  
 27 beyond the infringing functionality of EOS. For example, Arista’s announcement of EOS+

28

1 explains that it includes new technology for integrating Arista's products with other hardware and  
 2 software:

3 **The EOS+ Platform**

- 4 • EOS SDK – a development framework that allows native access to all levels  
   of EOS for custom development and integration with forwarding and routing  
   stacks that leverage advanced features such as MPLS.
- 5 • vEOS - a virtual machine instance of EOS that includes the same control  
   plane and management plane as the physical switches.
- 6 • [EOS Applications \(/en/products/eos/eos-applications\)](#) – Pre-built integration  
   with technology partners and DevOps systems such as Puppet and Splunk  
   for provisioning and monitoring.
- 7 • [EOS Consulting Services \(/en/products/eos/eos-consulting-services\)](#) –  
   Professional services for development of customized solutions for network  
   automation.

11 (Ex. 6 at 2.)

12 **Customizations for Cloud Networking**

13 Arista also introduced the EOS SDK for customers and technology partners who  
 14 are looking for a "do-it-yourself" approach to applications that are custom-fit for  
 15 their network environments. The EOS SDK allows customers to develop  
 16 applications that integrate directly with the switch operating system. This  
 17 approach can be used for customizing IP routing, protecting against DDoS  
 18 attacks through selective workflow-based filtering and analyzing data for fine-  
   grained visibility. This setup is ideal for large enterprises and cloud providers  
   that require a high degree of workload mobility and workflow visibility along with  
   the proven effectiveness and reliability of today's EOS.

19 (*Id.*)

20 These new integration capabilities of EOS+ implicate the patents-in-suit. The '886 patent,  
 21 for example, covers devices capable of translating commands from non-CLI formats into CLI  
 22 command expressions, and translating the resulting CLI output back into the non-CLI format in  
 23 which the command was sent. (*See* Ex. 4 at claim 6 (discussing XML-CLI translations).) It is  
 24 highly likely that the expanded "integration" Arista touts as a benefit of its EOS+ software  
 25 development kit ("SDK") is accomplished using the technology covered by the '886 patent. As  
 26 just one example, the EOS+ SDK "allows customers to develop applications that integrate directly  
 27 with the switch operating system" to permit "customizing IP routing" and the reporting of network

1 data for “workflow visibility.” (Ex. 6 at 2.) This will likely entail translating commands from the  
 2 customers’ applications into EOS CLI command expressions to adjust the routing in the network,  
 3 and translating the EOS CLI output into a format that the customers’ applications can use for  
 4 network monitoring—as claimed in the ’886 patent.

5 After witnessing Arista’s deliberate launch of a new product with additional infringing  
 6 functionality and receiving Arista’s answer—which included the admission that Arista is using  
 7 Cisco’s IOS CLI command expressions (*see* Dkt. 36 at ¶¶ 53, 54)—Cisco filed an amended  
 8 complaint on March 6, 2015. (Dkt. 37.) The amendments to the complaint added allegations that  
 9 Arista’s launch of the new EOS+ constituted willful patent infringement for which enhanced  
 10 damages are warranted, and that Arista has been indirectly infringing since at least the date that it  
 11 learned of Cisco’s original complaint.<sup>4</sup> (*Id.* at ¶¶ 58, 69-70, 73, 76-77, 80.) It is only these new  
 12 allegations that Arista moved to dismiss.

13 **III. LEGAL STANDARD**

14 Under Rule 12(b)(6) of the Federal Rules of Civil Procedure, a plaintiff is required to  
 15 allege “enough facts to state a claim to relief that is plausible on its face.” *Bell Atlantic Corp. v.*  
*Twombly*, 550 U.S. 544, 570 (2007). “Determining whether a complaint states a plausible claim  
 16 for relief will . . . be a context-specific task that requires the reviewing court to draw on its judicial  
 17 experience and common sense.” *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009). In conducting this  
 18 analysis, all factual allegations in the complaint are to be taken as true and all reasonable  
 19 inferences are to be drawn in the plaintiff’s favor. *Sharkey v. O’Neal*, 778 F.3d 767, 768 n.1 (9th  
 20 Cir. 2015).

22 “[T]o establish willful infringement, a patentee must show by clear and convincing  
 23 evidence that the infringer acted despite an objectively high likelihood that its actions constituted  
 24 infringement of a valid patent” and “that this objectively-defined risk . . . was either known or so

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26       <sup>4</sup> Cisco’s amendments also included updates to the status of its copyright registrations, some  
 27 of which were pending when Cisco filed its original complaint but had issued by the time Cisco  
 28 filed its amended complaint, and an allegation that EOS+ infringes Cisco’s copyrights. (See Dkt.  
 37 at ¶¶ 25-26, 60.) Arista has not moved to dismiss these amended allegations.

1 obvious that it should have been known to the accused infringer.” *In re Seagate Tech., LLC*, 497  
 2 F.3d 1360, 1371 (Fed. Cir. 2007).

3 To prove induced patent infringement under 35 U.S.C. § 271(b) or contributory patent  
 4 infringement under 35 U.S.C. § 271(c), a patentee must demonstrate that the accused infringer had  
 5 knowledge that its acts would cause a direct infringer to infringe the patents-in-suit. *See Global-*  
 6 *Tech Appliances, Inc. v. SEB S.A.*, 131 S.Ct. 2060, 2068 (2011).

7 **IV. ARGUMENT**

8 Cisco’s amended complaint sufficiently sets forth allegations of both willful and indirect  
 9 patent infringement by Arista. As a result, Cisco respectfully requests that Arista’s motion to  
 10 dismiss be denied in its entirety.

11       **A. Cisco’s Amended Complaint States a Claim for Willful Infringement**

12 Based on Arista’s own public statements, Arista’s launch of EOS+ represents the public  
 13 release of a new product. And there can be no dispute that Arista released this new product after  
 14 learning of Cisco’s patents. Arista’s launch of a new product with new infringing functionality is  
 15 an independent act of infringement from those alleged in Cisco’s original complaint that was  
 16 undertaken in reckless disregard of an objectively high likelihood that it would infringe Cisco’s  
 17 patents-in-suit. Cisco’s allegations to this effect sufficiently state a claim for willful patent  
 18 infringement.

19 Although “in ordinary circumstances, willfulness will depend on an infringer’s  
 20 prelitigation conduct” because “a willfulness claim asserted in the *original* complaint must  
 21 necessarily be grounded exclusively in the accused infringer’s pre-filing conduct” (*Seagate*, 497  
 22 F.3d at 1374 (emphasis added)), there is no *per se* rule that infringement must be based solely on  
 23 pre-suit conduct. *Affinity Labs of Tex., LLC v. Alpine Elecs. of Am., Inc.*, No. 9:08-cv-171, 2009  
 24 WL 9091275, at \*3 (E.D. Tex. Sept. 2, 2009) (denying motion to dismiss amended complaint that  
 25 added willfulness allegations based solely on conduct after the filing of the original complaint).

26 Multiple courts have allowed plaintiffs to pursue claims for willful infringement in  
 27 **amended** pleadings based on the defendant’s conduct after the suit was originally filed. *See*  
 28 *Clouding IP, LLC v. Amazon.com, Inc.*, C.A. Nos. 12-641-LPS, 12-642-LPS, 12-675-LPS, 2013

1 WL 2293452, at \*4-5 (D. Del. May 24, 2013) (denying motion to dismiss challenging allegations  
 2 of willful infringement “based, at least in part, on conduct predating the operative amended  
 3 complaint” but after the original complaint was filed); *Birchwood Labs., Inc. v. Battenfield Techs.,*  
 4 *Inc.*, No. 09-3555 (MJD/JJK), 2012 WL 2045757, at \*23 (D. Minn. May 21, 2012) (denying  
 5 motion to dismiss willful infringement counterclaim in declaratory judgment action, where  
 6 counterclaim alleged knowledge of the patents only after the time the suit was originally filed).  
 7 This is because the filing of the original complaint adequately puts the accused infringer on notice  
 8 of the asserted patents:

9 For purposes of pleading willful infringement, there appears to be little practical  
 10 difference between a pre-complaint notice letter informing a defendant about a  
 11 patentee’s allegation of infringement and a subsequently-superceded original  
 12 complaint formally alleging infringement. Such a pre-suit letter provides a basis  
 13 for pleading knowledge in the context of a willful infringement claim. . . . It  
 14 follows that the circumstances presented here—in which the original complaint  
 15 serves much the same purpose (among other things) as a notice letter—is likewise  
 16 sufficient to plead knowledge.

17 *Clouding IP*, 2013 WL 2293452, at \*4; see also *Birchwood*, 2012 WL 2045757, at \*23.

18 Arista’s decision to bring the allegedly “pioneering innovations” of EOS+ to market  
 19 despite its knowledge of Cisco’s patents supports Cisco’s allegations that Arista has acted with  
 20 reckless disregard for Cisco’s patent rights. It is that new act, which is independent of Arista’s  
 21 sale of devices that include the legacy EOS, that Cisco alleges to be willful infringement in its  
 22 amended complaint. There can be no reasonable dispute that Cisco could have filed a separate  
 23 infringement suit challenging Arista’s launch of EOS+, given that it is a different product with  
 24 new potentially infringing functionality. See, e.g., *Applied Med. Resources Corp. v. U.S. Surgical*  
 25 *Corp.*, 435 F.3d 1356, 1362 (Fed. Cir. 2006) (“Indeed, simply because the *same* company sold two  
 26 *different* products which infringed a patent does not prevent the patentee from litigating and  
 27 collecting *separate* damages for *each* infringement.”) (emphasis in original). And in such a suit,  
 28 Arista could be charged with willfully infringing Cisco’s patents by launching EOS+ after  
 becoming aware of Cisco’s original patent infringement allegations. See *Apeldyn Corp. v. Sony*  
 Corp., 852 F. Supp. 2d 568, 575 (D. Del. 2012) (denying motion to dismiss willful infringement  
 allegation where complaint alleged knowledge of the patents-in-suit due to previous litigation

between the parties). There is no point in Arista’s apparent proposal that Cisco should pursue its claims against Arista’s several infringing acts in an inefficient way: Cisco’s willful infringement claim against EOS+ should not be dismissed.<sup>5</sup>

The fact that Arista launched a new infringing product after Cisco’s complaint was filed plainly distinguishes this case from those cited by Arista. For example, in the case on which Arista principally relies, *LML Holdings, Inc. v. Pac. Coast Distributing Inc.*, No. 11-CV-06173 YGR, 2012 WL 1965878 (N.D. Cal. May 30, 2012), only one product was at issue, and that product was on sale before the original complaint was filed.<sup>6</sup> 2012 WL 1965878, at \*3. The only

<sup>5</sup> For this same reason, Cisco’s filing of the willfulness allegations in its amended complaint pursuant to Fed. R. Civ. P. 15(a)(1)(B), instead of filing a motion for leave to supplement under Fed. R. Civ. P. 15(d) as Arista contends would have been proper (Dkt. 39 at 2 n. 1), is immaterial. See, e.g., *Westwood v. Cohen*, 838 F. Supp. 126, 132 (S.D.N.Y. 1993) (“Inclusion of both Rule 15(a) and Rule 15(d) in Fed. R. Civ. P. 15 appears deliberately to create an overlap to avoid precisely the kind of controversy sought to be raised here.”). Allegations of post-suit conduct may be raised in an amended complaint. Courts have approved such amendments in multiple cases. See, e.g., *Clouding IP*, 2013 WL 2293452, at \*4-5 (denying motion to dismiss willfulness allegations in the “operative amended complaint”); *Zond, Inc. v. Fujitsu Semiconductor Ltd.*, 990 F. Supp. 2d 50, 57 (D. Mass. 2014) (noting “there is no bar to a plaintiff subsequently amending a complaint to include a claim of induced infringement where the defendant, upon obtaining knowledge through the filing of the lawsuit, of the patent and the alleged direct infringement of others, does not cease inducement”). But even if Cisco had sought leave to file its amended complaint as a supplemental complaint, such a motion would have been well-founded: “The clear weight of authority, however, in both the cases and the commentary, permits the bringing of new claims in a supplemental complaint to promote the economical and speedy disposition of the controversy.” *Keith v. Volpe*, 858 F.2d 467, 473-74 (9th Cir. 1988). And Arista has identified no prejudice to it from Cisco’s new allegations or any other reason why the supplementation would not be allowed. To the extent that Cisco’s Amended Complaint may be deemed a supplemental complaint, Cisco respectfully requests that its opposition to Arista’s motion to dismiss be treated as a motion for leave to file its new allegations pursuant to Rule 15(d).

<sup>6</sup> Another of Arista’s cited cases similarly involved allegations that the continued sale of the accused products after the filing of the original complaint constituted willfulness. *See McRo, Inc. v. Namco Bandai Games Am., Inc.*, 23 F. Supp. 3d 1113, 1115-16 (C.D. Cal. 2013). The other case that Arista cited, *Avocet Sports Tech., Inc. v. Garmin Int’l, Inc.*, No. C 11-04049 JW, 2012 WL 1030031 (N.D. Cal. Mar. 22, 2012), is even further afield from the facts at hand. That case did not involve an amended complaint that referred to knowledge gained from the filing of an original complaint. In *Avocet*, the plaintiff failed to allege “any facts to suggest that Defendant Garmin had knowledge of the [patent-in-suit] prior to the filing of the Complaint.” 2012 WL 1030031, at \*4.

1 conduct that the plaintiff there alleged constituted willfulness was that the defendant actively  
 2 litigated the case:

3 Here, the circumstance that LML identifies to substantiate a willfulness claim is the  
 4 litigation itself, including service of the initial complaint, amendment of the  
 5 complaint, and Defendants' filing of a Rule 12(b)(6) motion to dismiss. In essence,  
 6 LML alleges that Defendants' decision to defend this case on the merits  
 7 demonstrates willfulness.

8 *Id.* at \*5. The willful infringement allegation in Cisco's amended complaint is very different.  
 9 Cisco's willfulness allegation is not founded on Arista's litigation behavior, but rather Arista's  
 10 deliberate decision to launch a new infringing product with new infringing functionality after  
 11 learning of Cisco's patents.

12 Arista willingly chose to launch publicly what it describes as a major new product offering  
 13 after receiving notice of Cisco's patent infringement claims from the filing of Cisco's original  
 14 complaint. That Cisco is pursuing its willful infringement claims against that new product in the  
 15 same case as it is pursuing its prior claims against Arista's legacy products shows that Cisco is  
 16 acting efficiently—it does not make Arista's infringing launch of EOS+ any less willful. Arista's  
 17 motion to dismiss Cisco's willful infringement allegations therefore should be denied.

18       **B. Cisco's Amended Complaint States a Claim for Post-Suit Indirect**  
 19       **Infringement**

20 Cisco's indirect infringement allegations are presently limited to infringement occurring  
 21 after Arista received notice of Cisco's patents by virtue of the original complaint in this case. (*See*  
 22 Dkt. 37 at ¶¶ 70, 77.) Arista's motion to dismiss challenges only the sufficiency of Cisco's  
 23 indirect infringement allegations as to "pre-suit induced and contributory infringement claims."  
 24 (*Dkt. 39 at 5.*) Because Cisco is not now alleging pre-suit indirect infringement by Arista, there is  
 25 no such claim for the Court to dismiss.<sup>7</sup>

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26       <sup>7</sup> Indirect infringement allegations may be founded on a defendant's knowledge of the patents-  
 27 in-suit gained from the filing of a complaint. *See In re Bill of Lading Transmission and*  
 28 *Processing Sys. Patent Lit.*, 681 F.3d. 1323, 1345 (Fed. Cir. 2012) (reversing dismissal of indirect  
 29 infringement allegation based on awareness of patents gained from filing of original complaint).

1     **V.     CONCLUSION**

2         Cisco's amended complaint adequately states a claim for both willful and indirect  
3 infringement based on Arista's intentional use of Cisco's patented CLI technologies. For the  
4 foregoing reasons, Arista's motion to dismiss those allegations should be denied.

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Respectfully submitted,

2 /s/ Sean S. Pak

3 Kathleen Sullivan (SBN 242261)  
4 kathleensullivan@quinnmanuel.com  
5 QUINN EMANUEL URQUHART & SULLIVAN LLP  
51 Madison Avenue, 22<sup>nd</sup> Floor  
6 New York, NY 10010  
Telephone: (212) 849-7000  
Facsimile: (212) 849-7100

7 Sean S. Pak (SBN 219032)  
seanpak@quinnmanuel.com  
8 John M. Neukom (SBN 275887)  
johnneukom@quinnmanuel.com.  
9 Matthew D. Cannon (SBN 252666)  
matthewcannon@quinnmanuel.com  
10 QUINN EMANUEL URQUHART & SULLIVAN LLP  
50 California Street, 22<sup>nd</sup> Floor  
11 San Francisco, CA 94111  
Telephone: (415) 875-6600  
Facsimile: (415) 875-6700

12 Mark Tung (SBN 245782)  
marktung@quinnmanuel.com  
13 QUINN EMANUEL URQUHART & SULLIVAN LLP  
555 Twin Dolphin Drive, 5<sup>th</sup> Floor  
14 Redwood Shores, CA 94065  
15 Telephone: (650) 801-5000  
Facsimile: (650) 801-5100

16 Steven Cherny (*admission pro hac vice pending*)  
steven.cherny@kirkland.com  
17 KIRKLAND & ELLIS LLP  
601 Lexington Avenue  
18 New York, New York 10022  
Telephone: (212) 446-4800  
Facsimile: (212) 446-4900

19 Adam R. Alper (SBN 196834)  
adam.alper@kirkland.com  
20 KIRKLAND & ELLIS LLP  
555 California Street  
21 San Francisco, California 94104  
Telephone: (415) 439-1400  
Facsimile: (415) 439-1500

22 Michael W. De Vries (SBN 211001)  
michael.devries@kirkland.com  
23 KIRKLAND & ELLIS LLP  
333 South Hope Street  
24 Los Angeles, California 90071  
Telephone: (213) 680-8400  
Facsimile: (213) 680-8500

25 *Attorneys for Plaintiff Cisco Systems, Inc.*